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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,302

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Joseph M. Asher

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11/09/2010

INNOVATION DIVISION
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EXAMINER

HYLINSKI, STEVEN J

ART UNIT

PAPER NUMBER

3717

MAIL DATE

DELIVERY MODE

11/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/687,302	Applicant(s) ASHER ET AL.	
	Examiner STEVEN J. HYLINSKI	Art Unit 3717	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-10,12-15,19,20,22-26,30,33,35-37,41,43,44 and 46-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-10,12-15,19-20,22-26,30,33,35-37,41,43-44,46-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/22/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the application

1. In view of the appeal filed on 02/12/2009, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below. To avoid abandonment of the application, appellant must exercise one of the following two options: (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or, (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

2. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Melba Bumgarner/

Supervisory Patent Examiner, Art Unit 3717

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. This claim recites that each participant comprises a plurality of participants. It is unclear how this is possible, or whether there is a grammatical error in the claim and the claim should instead recite otherwise. Examiner is interpreting that the sum of each of the participants is a plurality of participants.

4. Claims 57, 59, 64, 66, 70, 72 are rejected under 35 U.S.C. 112, second paragraph, also as being indefinite because it is unclear how the total return comprises an amount that “at least approximates the desired odds”. It is unclear to Examiner how a return, presumably a dollar amount, could be judged whether it does or does not “at least approximate” the player’s initially-specified odds. Examiner is reading claims 57 and 59 similar to claim 15 which recites that the “total return is *based at least in part upon* the customized odds”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1, 3, 8-10, 12-15, 19-20, 22-26, 30, 33, 35-37, 41, 43-44, and 46-72 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2003/0054870 to Sato et al. (hereinafter referred to as “Sato”).**

Re Claims 1, 25

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Sato teaches:

An apparatus and method for its use comprising at least one processor having instructions associated therewith (Figs. 2-3 and paragraphs 34, 38) having instructions associated therewith that when executed make the processor operable to: a) receive from a bettor a wager for an event at desired odds, in which the event comprises a plurality of participants and a plurality of betting options (Paragraph 12, a particular bet control feature of the gaming system of Sato receives desired odds from a player and then enters bets on the plurality of finish place possibilities that meet the desired odds criteria set by the player. This feature is termed by Sato as the "Odds Commanding Bet" feature and is one of many features Sato provides that users may selectively make use of when operating his system in order to place horse racing bets. This feature is described further in paragraphs 103-124. Paragraph 105, for example, states that in order to facilitate less experienced bettors placing horse racing bets, the Odds Commanding Bet feature allows a game player to specify a desired odds range alone instead of the player having to manage odds calculations himself, and then automatically bets can be made. Paragraph 118 states that a player uses an input means to indicate desired odds and then all speculations complying with the chosen odds of the player are indicated, and the speculations that do not comply with the chosen odds are not indicated. Paragraph 120 states that once the player has received the selection from the computer of only the speculations that comply with the player's defined odds criteria the player makes an operational input to finalize and enter the bet. See Fig. 8 for an illustration of this functionality.)

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b) determine odds for the plurality of betting options, the odds comprising at least i) first odds for a first betting option and ii) second odds for a second betting option, determine that a combination of at least the first odds and the second odds at least approximates the desired odds, and d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximate the desired odds, establish for the bettor at least a first bet on the first betting option and a second bet on the second betting option (The player can use the "Set odds to bet" selection M1 to manually enter desired odds or the player can pick from predefined desired odds selections buttons M2. In accordance with paragraph 118, once the player has specified desired odds, "All speculations falling in the range of the commanded odds are indicated, and the rest speculations [sic] are not indicated". Because the player can specify a range of odds and not just a single odds value, the plurality of possible speculations, i.e. first and second betting options that may be shown as meeting the desired odds criteria can have more than one odds value and hence meeting the limitations of first and second odds. For example if a player selects 10-20 as the desired odds, and the player either manually considers multiple Quinella bets or presses the M3 "all betted" button, Quinella bets for Horses 1 and 6 would be first and second betting options that would provide the first and second odds of 18.8 and 15.1 (paragraph 117 confirms that these numerical values listed under the Quinella column K1 are forecasted odds), both within the desired odds range of the player. The player can either manually select more than one displayed speculation meeting the odds criteria on which to place bets, or also press the "all betted" button

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which will choose all bet options meeting the odds criteria. Selecting more than one speculation (betting option) having more than one odds value using the bet operational input by the player is selecting a combination of at least first and second odds that approximate the desired odds (fall within the range of desired odds) and the act of the bet operational input (Paragraph 120) such as “all betted” drives establishing for the bettor first and second bets on the first and second betting options.)

Re Claims 3, 26, 37

Fig. 8 shows under section J, indicators showing wins, amount paid, and existing credits for the player (these indicators are also described in Paragraph 55).

Re Claims 8, 30, 41,

The flow diagram of Fig. 9 for the “Odds Commanding Bet” feature discussed above shows credits being subtracted for the bet amount allocated to each speculated combination (block S61). Paragraphs 121-22 state that more than one speculation can be chosen and the wager amount accorded to each of the indicated speculations, such as a minimum wager amount corresponding to each speculation, is subtracted from the player’s credit amount.

Re Claims 9, 43

Claim 9 recites that if no combination of first and second odds approximate the desired odds, establishing a third bet on one of the plurality of odds available for that option. Because as described such as in paragraph 110 “all combinations of odds in the range may be indicated” after the player makes a selection of desired odds, and because Fig. 8 shows, for the example of Quinella speculations, there being 7 different

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Quinella speculations from which the computer will be evaluating against the desired odds, there will be more than just first and second odds available, in this case first through seventh odds. Therefore any odds value that meets the player's desired odds criteria of the overall group containing seven odds values, could be regarded as a third odds, and a bet on this speculation would be a third bet, relative to any two other odds of the group that would be considered first and second odds. Alternatively, in accordance with claim 43 reciting selecting only one bet instead of more than one, Sato's system supports if there were only one speculation that met the user's bet criteria. For example, if the player made the selection in section M2 on Fig. 8 of "under 10" for the chosen odds, there is only one Quinella speculation that would qualify for a bet.

Re Claims 10, 22, 33, 44

As discussed above, bet amounts corresponding to at least minimum bets for whichever of the potentially-plural speculations meeting the desired bet range are compared to the credit level residing in the player's account, and if the account contains sufficient value to fund the chosen speculations, amounts corresponding to the minimum bet for each chosen speculation are subtracted from the player's credit level (see paragraphs 121-122). This renders the minimum bet for each speculation a percentage relative to other minimum bets for other speculations, and also relative to the total credit balance. The total credit balance can be regarded as a target percentage because if this balance is not sufficient to fund the bets corresponding to the chosen speculations, the bets can not be entered.

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Re Claims 12, 14, 35, 46, 53, 62

Paragraph 35 describes and the Figs. also show Win, Place, Quinella, and other types of bets. Paragraph 8 states that these bets include finishing position speculations.

Re Claim 13,

See the rejection of claim 1 above, where the speculations discussed correspond to different horses, the horses meeting the limitation of participants - see Fig. 8 H1.

Re Claims 15, 59, 66, 69, 72

Claim 4 of Sato, which describes the "Odds Commanding" embodiment of his invention, pays the game player a share as a result of the race, upon which the player entered at least first and second bets based on speculations selected in accordance with meeting target odds criteria and assigned bet amounts based on minimum bet requirements associated with each speculation. Therefore the return is based on the customized odds. Also Paragraphs 86-90 discuss how Sato's system, as in conventional horse racing, makes payouts based on the odds at which a particular speculation was made. An example given is that a 5 coin bet on a 20:1 odds speculation pays out at 100 coins.

Re Claim 19,

The wagering that takes place using the horse racing speculation form such as that shown in Fig. 8, meets the limitation of selecting a plurality of participants from the field of participants in a pari-mutuel wagering event (horse racing), while wagering is ongoing (wagering at least by the player-of-interest.)

Re Claim 20,

See the discussion under the rejection of claim 10 above. The portion allocated to each speculation is based on the odds because if the player is using the “Odds Commanding” embodiment upon which the entire rejection is based, the player will only be wagering upon speculations that the computer has determined have odds meeting the desired odds criteria defined by the player (see again such as paragraph 110 of Sato).

Re Claim 23,

As shown in Fig. 8, pluralities of horses are available for selection with regards to a particular race upon which a player is speculating.

Re Claim 24,

See the rejection of claims 12 and 23 above.

Re Claim 36,

See the rejection of claim 1 above. As discussed in paragraphs 34 and 38, the player's wager selection and entry are accomplished under control of the CPU on the player's touch-panel computer. Paragraph 38 states that the functionality described in Sato's specification including that used to reject claim 1 above is carried out as command signals used by the game control circuit.

Re Claims 47-48, 60, 67

As shown in Fig. 8, there exist pluralities of different odds that are relatively greater or less than other odds. Any of these odds can be termed first or second odds and depending on the user's selected range, one or more of these odds can be different from the desired odds.

Re Claims 49-52, 54-56, 61, 63, 68

As discussed in the rejection of claim 1 above, at least first and second bets are made in accordance with first and second speculations, which can involve first and second horses finishing in a prescribed way in accordance with what type of bet is placed, the horses being a plurality of participants, and wins are in relation to the bets placed. As discussed in paragraphs 117-120, either the player can manually select horses in accordance with speculations that the computer shows are consistent with the desired odds, or the player can press the “all betted” button and forgo personal selection of speculations for the computer selecting all speculations meeting the desired odds criteria.

Re Claim 58, 65, 71

The bet amounts corresponding to first and second bets are “based at least in part” on first and second odds because it is based upon the odds for those two speculations that they were made in the first place – the odds must have met the player’s desired odds criteria to have been made.

Re Claims 57, 64 and 70,

Because the player’s desired odds selection can be a range and the odds corresponding to different speculations are numerical values as shown in Fig. 8, the desired odds and first and second odds are different at least in this respect. The rejection of claim 1 above discusses how first and second bets are placed at the first and second odds, and the rejection of claim 15 above discusses the return being based on the customized odds.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is included in the attached Notice of References Cited. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. HYLINSKI whose telephone number is (571)270-1995. The examiner can normally be reached on Mon-Fri 9am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on (571)272-4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melba Bumgarner/
Supervisory Patent Examiner, Art Unit 3717

/STEVEN J HYLINSKI/
Examiner, Art Unit 3717